

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6123 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRATAPRAI LALJIBHAI MODI THROUGH VINODBHAI L MODI

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT P BHATT for Petitioner
MR SP Dave, AGP for Respondent No. 1
MR SUNIL C PATEL for Respondent No. 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 20/11/97

ORAL JUDGEMENT

1. By preferring this application under Article 226 of the Constitution of India, the petitioner, the brother of Prataprai Lalji Modi, the detenu, has called in question the legality and validity of the detention order dated 19.7.1997 passed by the District Magistrate, Jamnagar so as to prevent the detenu from acting in any manner prejudicial to the maintenance of supplies of

essential commodities to the community.

2. The facts which led the petitioner to prefer this petition may in brief be stated. The detenu is having his Modi Oil Industries at Jam-Khambhalia in Jamnagar district. Obtaining necessary licence, he is producing ground-nut oil and has to have the dealings thereof in consonance with the rules and law governing the same. On 5.7.1997 the District Supplies Officer, Jamnagar had gone to the Panchshil Solvent Industries and Hindustan Liver Limited, situated within the local limits of Jamnagar city and village Dhinchada respectively for inspecting the accounts. During the course of inspection, he found certain bills showing the sale transactions. The bills were found to have been issued by one Triveni Industries, and when further investigation was made checking the record of different industries, the Inspector could see that the detenu producing the ground-nut oil had also by mal-practices suppressed the facts about the production and sale. He had for unjust enrichment resorting to several malpractices committed several breaches of law and rules applicable maintaining false records. He, therefore, made deep inquiry and found that the detenu had maintained incomplete account so as to have black marketing of the ground-nut oil, and had not maintained the particulars of the sale to all those purchasing ground-nut oil. It was also found that quantum of production was not shown correctly, instead that, far below the quantum of production was shown, and thereby excess of the quantum shown on record, was unjustly disposed of without billing and maintaining true and correct accounts as well as particulars of the parties. The detenu was thus adopting profiteering weired mal-practices so as to have opulence, unjust enrichment and depriving the people of their right to have their quota periodically for their subsistence was playing mischief with the larger good and public weal. At the conclusion of penetrating astute and canny inquiry, it was found that the petitioner had committed the breach of the terms no. 4(2), 9 and 10 of the Licence issued and Clauses 18(4)(1), 24(1)(2) and 23 of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 (for short 'the Act"). It was also found that, that fixed supply of ground-nut oil was, injurious to the interest of society, withheld and diverted for the benefit of those having vested interest or the blackmarketeers boosting black-economy. To check and curb the mal-practices of the detenu stern action was a must. It was also found by the District Magistrate Jamnagar that the only way open to him was to exercise his powers under sec. 3(1) of the Act detain the

petitioner in custody passing the order of detention. With the result, the order in question came to be passed and the petitioner was then arrested. At present he is detained in custody. He has preferred this petition calling in question the legality and validity of that order.

3. According to the petitioner, all the documents on which the Detaining Authority placed reliance were not supplied. When the Detaining Authority was relying upon some of the terms of the licence, it was in law incumbent upon that authority to supply the copy of that licence so as to make effective representation. But the copy of that licence was not supplied and, therefore, he was deprived of his right to prepare his defence or make necessary representation. What is next submitted, challenging the order, is that his representation was not dealt with expeditiously as mandated by Article 22(5) of the Constitution of India. Hence his detention as well as the order of detention were unconstitutional, unjust and invalid. The learned APP Shri Dave supported the order.

4. At the time of hearing, when the papers were perused, the learned advocate Mr Bhatt representing the detenu did not press the second ground, but vehemently emphasised on the first ground namely non-supply of necessary documents. When that is the case, I would while dealing with the petition confine myself to the only ground on which the order is sought to be challenged and quashed. At the time of hearing when the query was made to the learned AGP Mr Dave, regarding the submission about non-supply of the copy of the licence made by the otherside, he tried his best to convince me about the supply thereof. Ultimately, when with meticulous care, the papers were perused, Mr Dave with usual candour fairly conceded that there was nothing on record indicating about the supply of the copy of the licence on which the Detaining Authority relied upon. But Mr Dave, learned AGP submitted that it would not in any way help the detenu, as on that count the order in question could not be quashed because the licence was issued to the detenu, and the terms and conditions of the licence, were very much within the knowledge of the detenu. When the party was in know of the contents of a particular documents relied upon by the Detaining Authority, it was not necessary to supply the copy of that document because in law what was necessary for the Detaining Authority was to supply the copies of those documents which were not in possession of the detenu, or not within the knowledge of the detenu.

5. The contentions advanced does not gain a ground to stand upon. A similar question arose before the Supreme Court of India in the case of A. Ahamedkutty vs. Union of India & Anr., reported in (1990)2 SCC 1. The said decision is the clear answer to the contention advanced by Mr Dave learned AGP. It has been held in that decision while dealing with the likewise questions as under:

It is immaterial whether the detenu already knew about their contents or not. In Mehruniss v. State of Maharashtra it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the seizure list was held to be fatal. To appreciate this point one has to bear in mind that the detenu is in jail and has no access to his own documents. In Mohd. Zakir v. Delhi Administration it was reiterated that it being a constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention pari passu the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of constitutional safeguards enshrined in Article 22(5).

In view of the aforesaid decision of the Supreme Court giving a clear-cut answer to the contention raised on behalf of the respondents the same fails. It was imperative on the part of the Detaining Authority to supply the detenu with the copy of the licence on which the Detaining Authority relied upon mentioning in the order that the breach of particular terms and conditions of licence was committed. It was therefore, necessary to supply the copy of licence because the petitioner was in jail, and it was beyond his control to go out of jail, and getting the same from his premises, peruse the same. It is because of such inability it was necessary on the part of the Detaining Authority to supply the copy of the licence so that in the jail also the detenu could study it and decide whether he should make the representation, if yes, on what ground. But as the same is not supplied, the right to make effective representation is marred. When that is the case, the detention has to be held unconstitutional and invalid.

6. For the aforesaid reasons, the detention order is unconstitutional, illegal and invalid. Consequently, the same is quashed. The detenu-Prataprai Lalji Modi is ordered to be set at liberty forthwith, if no longer required in any other case. Rule made absolute. D.S. Permitted.
